SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 210144

X06-UWY-CV-18-6046436S
X06-UWY-CV-18-6046437S
X06-UWY-CV-18-6046438S

ERICA LAFFERTY, ET AL.
V.
ALEX EMRIC JONES, ET AL.

WILLIAM SHERLACH
V.
ALEX EMRIC JONES, ET AL.

WILLIAM SHERLACH, ET AL.
V.
ALEX EMRIC JONES, ET AL.

PLAINTIFFS' STATEMENT IN OPPOSITION TO THE PETITIONERS-APPLICANTS' APPLICATION FOR CERTIFICATION TO FILE PUBLIC INTEREST APPEAL, WITH APPENDIX

FOR THE PLAINTIFFS-RESPONDENTS:

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The Jones defendants have not been deprived of due process in any respect. The recusal motion that is the subject of this appeal was tactical. Filed in anticipation that sanctions would soon enter, the recusal motion merely re-argued years-old discovery rulings, including rulings that were affirmed by this Court in *Lafferty v. Jones*, 336 Conn. 332, 377 (2020), *cert. denied*, 209 L. Ed. 2d 529 (2021). The hardworking trial judge who presides over this case appropriately denied the motion – under the circumstances, it was her duty to do so. The denial of a baseless recusal motion implicates no substantial public interest. To permit a public interest appeal here would elevate and validate a frivolous attack on the judiciary, unfairly delay the progress of the case below, and degrade the "egregious case[] involving actual bias or unusual circumstances creating an intolerably high risk thereof" due process standard of *State v. Rizzo*, 303 Conn. 71, 116 (2011).

For all these reasons, this application should be denied.

I. COUNTERSTATEMENT - BRIEF HISTORY OF THE CASE

A. The Recent History of this Case

The Jones defendants' repeated delay, misconduct, and disregard of court orders prior to June 2019 is well-documented in this Court's ruling in *Lafferty*, 336 Conn. at 336-47. This misconduct continued on remand. As the plaintiffs attempted to pursue discovery – including continuing to seek discovery that had been ordered well before the June 2019 sanction – the Jones defendants withheld compliance and manufactured evidence. The plaintiffs filed a series of sanctions motions.[1] The trial court addressed the motions

[1] *See* PA-1, DN 394 7/6/21 Mot. for Sanctions re Violation of Protective Order; PA-2, DN 395 7/6/21 Mot. for Sanctions re Accounting Docs. (redacted per protective order); PA-3, DN 428 7/27/21 Am. Mot. for Sanctions re Accounting Docs. (same motion as DN 395, amended to follow trial court's rulings on sealing and redaction); PA-4, DN 450 8/24/21 Mot. for Sanctions re Google Analytics & Social Media Data (redacted per protective order);

gradually, in some cases issuing orders indicating sanctions would enter without determining the sanction,[2] and in others deferring decision until after oral argument.[3] One of a series of hearings regarding the plaintiffs' sanction motions took place on October 20, 2021. During that sanctions hearing, the Jones defendants filed the Motion to Recuse that is the subject of this § 52-265a application. A-34, DN 519.[4]

B. The Motion to Recuse

The recusal motion argued that Judge Bellis' rulings and in-court actions created the appearance of bias, focusing primarily on pre-June-2019 rulings and actions.[5] Rather than addressing the Jones defendants' own misconduct in that time period, the Motion to Recuse rendered a few moments selectively and summarily concluded that "[a]lthough the

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PA-5, DN 527 10/22/21 Mot. for Sanctions re Google Analytics and Social Media Data (same motion as DN 450, amended to follow trial court's rulings on sealing and redaction); PA-6, DN 457 9/9/21 Mot. for Sanctions re Manufactured Evid.

[2] *See* PA-7, DN 394.10 8/5/21 Order re Sanctions re Violation of Protective Order; PA-9 to PA-11, DN 428.10, 428.11 8/6/21 Order re Sanctions re Accounting Docs. (parts 1 & 2); PA-12, DN 450.20 9/30/21 Order re Sanctions re Google Analytics and Social Media Data.

[3] *See* PA-14, DN 499 10/7/21 Order re Sanctions Hearing.

[4] The Jones defendants were equally noncompliant in similar actions brought against them in Texas, and on September 27 – a little more than three weeks before the Motion to Recuse was filed in this case – the District Court of Texas defaulted Alex Jones, InfoWars LLC, and Free Speech Systems LLC. *See* PA-15, *Heslin v. Jones*, 2021 WL 4571198 (Tex. Dist. Sep. 27, 2021); PA-17, *Lewis v. Jones*, 2021 WL 4571199 (Tex. Dist. Sep. 27, 2021); PA-19, *Pozner v. Jones*, 2021 WL 4620658 (Tex. Dist. Sep. 27, 2021). The Texas default did not cause any change in the Jones defendants' behavior in this case. Even following the Texas sanction, the Jones defendants chose to continue their noncompliance here. Indeed, instead of complying, they preemptively attacked the trial judge through the Motion to Recuse that is the subject of the proposed appeal.

[5] The Motion to Recuse acknowledged the distinction between a claim of an appearance of impropriety and a claim of actual bias. A-50, DN 519 ("A claim of an appearance of impropriety under Canon 1 Rule 1.2 of the Connecticut Code of Judicial Conduct is fundamentally different from a claim of actual bias."). It did not argue actual bias.

decisions of Judge Bellis were affirmed on appeal, her actions to that point nonetheless created the appearance of bias." A-46, DN 519.

The plaintiffs opposed the motion to recuse on October 27, 2021. A-511 to A-536, DN 541. The trial court denied the motion on November 4, 2021, finding that "[t]he burden of establishing judicial bias, partiality, or impropriety rests on the movants. The motion is denied as the movants have not met their burden." A-550, DN 519.20. The trial court found that there was "no dispute as to the underlying facts that give rise to this motion, as the evidence submitted by the defendants primarily consists of transcripts and orders contained in the official court file." *Id.* Consequently, the trial court denied the Jones defendants' request for an evidentiary hearing, as such a hearing is only necessary "[w]here there is a factual dispute involved in a claim of disqualification." *Id*. (citing *Szypula v. Szypula*, 2 Conn. App. 650, 655-56 (1984)).

On November 15, the trial court entered a disciplinary default against the Jones defendants. Despite the court's forbearance, the Jones defendants persisted in their "callous disregard of their obligations to fully and fairly comply with discovery and Court orders." PA-34, Ruling Tr. at 14:15-17 (Nov. 15, 2021). The Jones defendants' "failure to produce critical documents, their disregard for the discovery process and procedure and for Court orders is a pattern of obstructive conduct that interferes with the ability of the plaintiffs to conduct meaningful discovery and prevents the plaintiffs from properly prosecuting their claims." *Id.* at 15:2-7. The trial court emphasized that it had actually delayed entering sanctions to give the Jones defendants additional opportunities to correct their noncompliance: "The Court held off on scheduling this sanctions hearing in the hopes that many of these problems would be corrected and that the Jones defendants would

ultimately comply with their discovery obligations and numerous Court orders, and they have not." *Id.* Ultimately, the Jones defendants' continued resistance to discovery left the court no choice: "At this point entering other lesser sanctions such as monetary sanctions, the preclusion of evidence or the establishment of facts is inadequate given the scope and extent of the discovery material that the defendants have failed to produce." *Id.* at 15:8-24.

This application was filed on November 16, 2021.

II. THE TRIAL COURT'S DENIAL OF THE RECUSAL MOTION DOES NOT IMPLICATE A SUBSTANTIAL PUBLIC INTEREST

To be permitted, the Jones defendants' appeal must "[involve] a matter of substantial public interest and in which delay may work a substantial injustice." *Metro. Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 249 Conn. 36, 48 (1999) (quoting Conn. Gen. Stat. § 52-265a). Cases in which such applications have been granted usually affect a significant number of people in a substantive and substantial way.[6] The issue presented here does not come close.

There is no due process violation, because this is not an "egregious case[] involving actual bias or unusual circumstances creating an intolerably high risk thereof." *Rizzo*, 303 Conn. at 116. The recusal motion complained of adverse rulings, most of which were affirmed by this Court. The trial court was duty-bound to deny it, which is exactly what it did. There is no substantial public interest at issue, and delay will work no injustice at all. For all these reasons, this application should be denied.

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[6] See, *e.g.*, *Metro Life Ins.*, 249 Conn. 36 *Laurel Park, Inc. v. Pac*, 194 Conn. 677, 680 (1984) (injunction allowed continued operation of facility contaminated with chemical that threatened "imminent and substantial damage" to public health); *Hall v. Gilbert & Bennett Mfg.*, 241 Conn. 282, 302 (1997) (retroactivity of change in process for resolving contested workers compensation claims).

A. The Jones Defendants' Due Process Arguments Are Baseless

Attempting to elevate their attack on the trial judge to the level of a public interest appeal, the Jones defendants claim that the denial of the Motion to Recuse violated their due process rights. First, they claim, largely through re-arguing issues decided in *Lafferty*, that the purported judicial bias was so egregious that the trial judge was constitutionally required to recuse herself. Appl. at 7-10. Second, they claim that the judge violated their due process rights when she herself decided the motion to recuse, rather than referring the motion to another judge. *Id.* at 10. Both claims are unfounded.

Compared to a party seeking disqualification based on statute, common law, or the Code of Judicial Conduct, a party seeking to disqualify a judge on due process grounds must overcome a high bar. An appearance of bias will not suffice. The moving party must establish an "egregious case[] involving actual bias or unusual circumstances creating an intolerably high risk thereof." *Rizzo*, 303 Conn. at 116. "[C]ertainly only in the most extreme of cases would disqualification on [the basis of allegations of bias or prejudice] be constitutionally required." *State v. Canales*, 281 Conn. 572, 595 (2007) (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821 (1986)). This is because "the requirements of due process are less rigorous than those of the Code of Judicial Conduct, which mandates both impartiality and the appearance of impartiality." *Id.* at 594. Thus, "[a]n appearance of bias, in and of itself, will never offend the [d]ue [p]rocess [c]lause." *Rizzo*, 303 Conn. at 116 n.37.

There is absolutely no due process violation here. Rulings affirmed by this Court cannot possibly form the basis for a *Rizzo* claim. Nonetheless, the Jones defendants repeatedly argue such rulings as the basis for this Application.

They assert that the trial court's pre-*Lafferty* discovery orders were actually biased

because they were “shifting,” “contradictory,” and poorly defined. Appl. at 3-4. This ignores this Court’s ruling that “[i]t is undisputed that the trial court's discovery orders were reasonably clear and that the defendants violated four of them.” *Lafferty*, 336 Conn. at 375. They assert that the 2019 sanctions hearing evinced actual bias because the trial court “incorporated alternative bases,” Appl. at 3, in ordering sanctions, by relying on “[Alex Jones’ June 14, 2019] broadcast and the discovery issues in imposing sanctions, *id*. at 5. This ignores this Court’s ruling that the trial court’s two bases for its sanctions order were appropriate — that is, the defendants’ willful disregard for discovery orders and the June 14 broadcast “when considered together, provided sufficient grounds for sanctioning the defendants.” *Lafferty,* 336 Conn. at 347. And they assert that the trial court was biased in that it did not give them a fair opportunity to be heard because they were “barely permitted to speak” at the 2019 sanctions hearing. Appl. at 10. This ignores this Court’s ruling that “[t]he trial court held a hearing, at which it heard thorough argument on the issue, and at no point during the argument did the defendants request additional time. This satisfies the due process requirement for a meaningful opportunity to be heard.” *Lafferty*, 336 Conn. at 385.”[7]

[7] The Jones defendants cite *Maybury v. Pennsylvania*, 400 U.S. 455 (1971), and *In re Murchison*, 349 U.S. 133 (1955). Appl. at 8-10. *Maybury* confirms that the trial court was correct to reject the obviously strategic recusal motion. The Court in *Maybury* specifically rejected the notion that a party may force a judge’s recusal through strategic misconduct: “we do not say that the more vicious the attack on the judge the less qualified he is to act. A judge cannot be driven out of a case.” *Maybury*, 400 U.S. at 463; *see also id.* at 464 (“Of course where acts of contempt are palpably aggravated by a personal attack upon the judge in order to drive the judge out of the case for ulterior reasons, the scheme should not be permitted to succeed.”) (quoting *Cooke v. United States*, 267 U.S. 517, 539 (1925)). The law presumes that judges are more than capable of proceeding impartially even in the face of resistance and heated argument from a party. “We cannot assume that judges are so irascible and sensitive that they cannot fairly and impartially deal with resistance to their

Finally, the defendants assert that the trial court's post-*Lafferty* rulings demonstrated actual bias through "sanctions orders and oppressive discovery rulings." Appl. at 6. In support of this argument, they cite to a portion of the affidavit submitted along with their Motion to Recuse, which actually includes examples of their own misconduct: namely, a lack of candor toward the trial court and their disclosure of designated confidential information. *See* A86-A90.[8]

For all these reasons, no due process violation is remotely at issue here, and the application should be denied.

B. The Trial Judge Correctly Decided the Motion to Recuse Herself Without Referring It to Another Judge Because There Was No Factual Dispute

It is common practice in Connecticut for a judge to hear and determine the very motion seeking to disqualify him or her.[9] The only situation in which a judge may be required to refer such a motion to another judge is when there is a factual dispute central to the claim for disqualification and the movant has stated facts on the record that "give fair

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authority or with highly charged arguments about the soundness of their decisions." *Ungar v. Sarafite*, 376 U.S. 575, 584 (1964). *Murchison* is inapposite. In *Murchison*, a judge acting "as a so-called 'one-man grand jury'" under Michigan law charged one individual with perjury and another with contempt and then tried both in open court. *Murchison*, 349 U.S. at 133-35. Neither *Maybury* nor *Murchison* present circumstances remotely similar to the fair and thorough proceedings in this case.

[8] In addition, to the extent the application challenges the trial court's pre-*Lafferty* discovery orders and the 2019 sanctions hearing, events that occurred *years* outside of the § 52-265a application period, it is also untimely. *See* Conn. Gen. Stat. § 52-265a (appeal must be brought "within two weeks from the date of the issuance of the order or decision").

[9] *See, e.g.*, *State v. Milner*, 325 Conn. 1 (2017); *Bonelli v. Bonelli*, 214 Conn. 14 (1990); *Hoffkins v. Hart-D'Amato*, 187 Conn. App. 227 (2019); *Condon v. Silano*, 1998 WL 921348 (Conn. Super. Ct. Dec. 23, 1998) (Vertefeuille, J.); *see also United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992) ("[R]ecusal motions are committed to the sound discretion of the district court.").

support to his claim." *Szypula*, 2 Conn. App. at 656; *State v. Milner*, 325 Conn 1, 10 (2017).[10]

The trial court fully considered the Jones defendants' motion, applied the correct standard, and determined that "there is no dispute as to the underlying facts that give rise to this motion, as the evidence submitted by the defendants primarily consists of transcripts and orders contained in the official court file." A-550, DN 519.20. The facts of what occurred prior to, during, and after the 2019 sanctions hearing were not in dispute. The Jones defendants merely argued that rulings adverse to them created the appearance of impropriety. *See D'Amato v. Hart-D'Amato*, 169 Conn. App. 669, 688 (2016) ("The citations to the record referenced in her brief and the motions for disqualification to which the defendant directs our attention suggest that the defendant's argument of bias stems largely from the court's rulings that were adverse to her."). Therefore, no evidentiary hearing was required. *See Rozbicki v. Gisselbrecht*, 152 Conn. App. 840, 851-52 (2014) ("[the plaintiff] argues that the court improperly failed to refer the motion [to disqualify] to another judge and improperly denied the motion when the court exhibited bias toward him, as evidenced by the court's adverse rulings. . . . We disagree. . . . A hearing before another judge was not required. . . . The facts alleged in this case . . . do not give fair support to the claim of

[10] *See also United States v. Miller*, 355 F. Supp. 2d 404, 405 (D.D.C. 2005) ("The judge who is the object of the recusal motion rules on the motion. . . . [D]isqualification is not automatic upon submission of affidavit and certificate; rather, the judge must review these submissions for legal sufficiency . . . and construe them strictly against the movant to prevent abuse") (internal citations omitted); *Nat'l Auto Brokers Corp. v. Gen. Motors Corp.*, 572 F.2d 953, 958 (2d Cir. 1978) ("The mere filing of an affidavit of prejudice does not require a judge to recuse himself. On the contrary, we have held that a judge has an affirmative duty to inquire into the legal sufficiency of such an affidavit and not to disqualify himself unnecessarily, particularly 'where the request for disqualification was not made at the threshold of the litigation and the judge has acquired a valuable background of experience.'") (quoting *Rosen v. Sugarman*, 357 F.2d 794, 797-98 (2d Cir. 1966)).

judicial bias.").

C. The Trial Court Correctly Denied the Motion to Recuse

The trial court found that the Jones defendants "have not met their burden [of establishing judicial bias]." A-550, DN 519.20. The trial court was absolutely right that the Jones defendants failed to establish the appearance of bias.[11] Moreover, this determination is committed to the "sound judicial discretion" of the trial judge. *Canales*, 281 Conn. at 593.

In their Motion to Recuse, the Jones defendants complained primarily of rulings made by the trial court and already reviewed by this Court. A-52 to A-61, DN 519.00. Adverse rulings do not establish bias. "It is an elementary rule of law that the 'fact that a trial court rules adversely to a litigant, even if some of these rulings were to be determined on appeal to have been erroneous, does not demonstrate personal bias.'" *Bieluch v. Bieluch,* 199 Conn. 550, 553 (1986). Using a recusal motion to collaterally attack rulings the movant does not like, moreover, is wholly inappropriate. *McKenna v. Delente*, 123 Conn. App. 137, 145-46 (2010) (where claims of "prejudice and bias amount to nothing more than a collateral attack" on the court's orders, the attempt to "relitigate" the issues "by way of a motion for disqualification" is "improper"). The Jones defendants engaged in exactly such improper behavior in their Motion to Recuse. Further, plainly aware that sanctions were likely to issue, they chose to attack the trial judge rather than to attempt to cure their noncompliance.

In the Motion to Recuse, the defendants also complained at length of the trial

[11] Indeed, "[a] judge has an affirmative duty . . . not to disqualify himself unnecessarily." *National Auto Brokers*, 572 F.2d at 958. "Otherwise, litigants would be encouraged to advance speculative and ethereal arguments for recusal and thus arrogate to themselves a veto power over the assignment of judges." *Thomas v. Trustees for Columbia Univ.*, 30 F. Supp. 2d 430, 431 (S.D.N.Y. 1998).

court's referral of Attorney Pattis to the Statewide Grievance Committee for submitting a false affidavit. The trial court was well justified in doing so. "The inherent authority to administer judicial proceedings carries with it a corollary power to control those involved in court business – parties, witnesses, jurors, spectators, and lawyers – to maintain order, decorum, and respect." *Lafferty*, 336 Conn. at 348-49. The Grievance Committee decision regarding the false affidavit, A-534 to A-536, on which the Jones defendants relied, only confirmed that the trial court's referral was appropriate. The Grievance Committee decision records that "Disciplinary Counsel contended that the affidavit appears objectively false." A-535, Grievance Comm. Decis., at 2. Attorney Pattis did not attempt to argue otherwise. *See id.* Rather, he sought to excuse the filing of a false affidavit as a mistake that had not harmed anyone: "The Respondent indicated that there was no claim of prejudice by opposing counsel in connection with the affidavit."[12] In sum, the trial court correctly denied the recusal motion.

III. DELAY WILL WORK NO INJUSTICE

For all the reasons previously stated, delay in reviewing the ruling below will work no injustice.

IV. CONCLUSION

For the foregoing reasons, the Application should be denied.

[12] This representation was not accurate. The hearing took place October 3, 2019, and presumably Attorney Pattis made that representation on that day. Well before that date, in an April 29, 2019 filing, the plaintiffs stated: "Plaintiffs Are Prejudiced by the Jones Defendants' Use of the False Affidavit and Are Entitled to Relief Accordingly." PA-39, DN 236, 4/29/19 Pl. Mot. for Relief Concerning Alex Jones False Affidavit, at 7. It was not accurate that "there was no claim of prejudice by opposing counsel in connection with the affidavit."

Respectfully Submitted,
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By /s/

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CERTIFICATION

Pursuant to Rule of Appellate Procedure 62-7, I hereby certify that on November 22, 2021, a true and correct copy of the foregoing has been delivered electronically to the last known e-mail addresses of each counsel of record for whom an e-mail has been provided, as indicated below; that the foregoing document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and that the foregoing document complies with all applicable rules of appellate procedure.

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APPENDIX TO PLAINTIFFS' STATEMENT IN OPPOSITION TO THE PETITIONERS-APPLICANTS' APPLICATION FOR CERTIFICATION TO FILE PUBLIC INTEREST APPEAL

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MOTION FOR SANCTIONS BASED ON THE JONES DEFENDANTS' VIOLATION OF THE PROTECTIVE ORDER

"Our rules of discovery are meant to serve the ends of justice by 'facilitating an intensive search for the truth through accuracy and fairness, provid[ing] procedural mechanisms designed to make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.'" *Picketts v. Int'l Playtex, Inc.*, 215 Conn. 490, 508 (1990) (citations omitted). "[T]hey are not meant to be used to conduct fishing expeditions[.]" *Torres v. Ngo Ong*, 2014 WL 6476637, at *3 (Conn. Super. Ct. Oct. 23, 2014) (Wilson, J.) (citing *Picketts*, 215 Conn. at 508.

The Jones defendants are abusing the discovery process. Their pattern of defying and ignoring court orders to produce responsive information is well established—and the subject of

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PLAINTIFFS' MOTION FOR SANCTIONS

Pursuant to Practice Book §§ 13-10 and 13-14, the plaintiffs move for sanctions due to the Jones defendants' deliberate noncompliance with the Court's May 6 order requiring production of subsidiary ledger accounting documents. When they provided compliance on this issue, the Jones defendants represented they had produced subsidiary ledgers, but in fact did not include them. The Jones defendants' accounting manager [redacted]. The Jones defendants' noncompliance on this issue prejudices the plaintiffs, impairing counsel's ability to prepare for depositions that must be taken this summer in

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ALEX EMRIC JONES, ET AL.	**:**	**AUGUST 24, 2021**

MOTION FOR SANCTIONS BASED ON THE JONES DEFENDANTS' FAILURE TO PRODUCE WEB AND SOCIAL MEDIA DATA AND ANALYTICS

"An order of the court must be obeyed until it has been modified or successfully challenged, and the consequences for noncompliance may be severe indeed." *Lafferty v. Jones*, 336 Conn. 332, 381 (2020) (quoting *Fox v. First Bank*, 198 Conn. 34, 40 n.3 (1985)), *cert. denied*, 2021 WL 1240941 (U.S. Apr. 5, 2021). For two and a half years, the Jones defendants have been under a court order to produce sales, marketing, and web-analytics data, including Google Analytics data. The Court set a "final" deadline for production of the "already overdue supplemental compliance" for June 28, 2021. Order, Dkt. 348.10, June 2, 2021. It expressly warned that "[f]ailure to comply with this order may result in sanctions including but not limited to a default." *Id.* The Jones

NO. X06-UWY-CV-18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**AUGUST 24, 2021**

NO. X-06-UWY-CV18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**AUGUST 24, 2021**

NO. X06-UWY-CV-18-6046438-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**AUGUST 24, 2021**

MOTION FOR SANCTIONS BASED ON THE JONES DEFENDANTS' FAILURE TO PRODUCE WEB AND SOCIAL MEDIA DATA AND ANALYTICS

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NO. X06-UWY-CV-18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**SEPTEMBER 9, 2021**

NO. X-06-UWY-CV18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**SEPTEMBER 9, 2021**

NO. X06-UWY-CV-18-6046438-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**SEPTEMBER 9, 2021**

PLAINTIFFS' MOTION FOR SANCTIONS RE MANUFACTURED TRIAL BALANCES

In their now-overruled Objection to Plaintiffs' Motion for Sanctions (DN 427.00) (the "Objection"), the Jones defendants admitted to manufacturing evidence. Through the Objection, the plaintiffs learned for the first time that what FSS produced as "trial balances" are not the trial balances it maintains. The trial balances it actually maintains – the ones in its Quickbooks program – have never been produced. Producing manufactured "trial balances" does not constitute fair production of actual trial balances. The misconduct here is not just willful disobedience of a court order, it is also intentionally misleading and obfuscating.

DOCKET NO: UWYCV186046436S

SUPERIOR COURT

LAFFERTY, ERICA Et Al
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JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

8/5/2021

ORDER

ORDER REGARDING:
07/06/2021 394.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER:

By written stipulation, and unless the court orders otherwise, parties can agree to modify discovery procedures. See Connecticut Practice Book Section 13-32. In these consolidated cases, the defendants Alex Jones, Free Speech Systems, LLC, Infowars, LLC, Infowars Health, LLC, and Prison Planet TV, LLC ("the Jones defendants") did just that. Additionally, they took their agreement with the plaintiffs a step further and asked the court to issue a protective order pursuant to Practice Book Section 13-5 and approve their joint discovery stipulation. The Jones defendants filed no less than three versions of a proposed protective order for the court's approval, see entry numbers 177,181,183, and 185, asserting that they were asking for the same discovery protection that would have been in place in federal court had the cases not been remanded back to state court. They indicated, correctly, that discovery materials are not filed with the court and as such are not ordinarily available to the public. The court ultimately approved the stipulation of the parties, which complied with all relevant requirements of the Connecticut Practice Book and which, inter alia, set forth the procedure by which sensitive confidential information obtained through pretrial discovery would be handled and, if necessary, filed with the court. The order provided that of all or part of a deposition transcript could be designated as confidential by counsel for the deponent or designated party, by requesting such treatment on the record at the deposition or in writing no later than thirty days after the date of the deposition. It set forth simple procedures by which the designation of "confidential" could be subsequently challenged, and how confidential information could be filed with the court. Importantly for the purposes of this motion, the protective order clearly prohibited discovery information designated as confidential from being filed with the court until such time that the court had ruled on the designating party's motion under Practice Book Section 11-20A. The Jones defendants did not oppose the plaintiffs' June 8,2021 motion to modify the protective order, which recited a good cause basis for the modification and which added a "Confidential- Attorneys Eyes Only" designation to the above mentioned procedures. Based upon the written motions filed by the plaintiffs and the Jones defendants, the court, in entering the protective orders, found good cause for both the issuance of the original protective order and its modification. In support of the motion for protective order, the Jones defendants identified their privacy interests in sensitive proprietary information including proprietary business, financial, and competitive information that they maintain as trade secrets, proprietary business and marketing plans, marketing data, web analytics, sales analytics, and/or other web traffic data, and marketing data or analytics. They referred to the "unique" business model that makes them competitive and successful. The plaintiffs, in support of the modification to the protective order, identified their privacy interests in their medical histories, psychiatric records,and private social media accounts. In the midst of taking the first deposition of a plaintiff, the defendants Free Speech Systems LLC, Infowars LLC, Infowars Health LLC, and Prison Planet TV LLC (Infowars),filed a motion to depose Hillary Clinton, using deposition testimony that had just been designated as "Confidential-Attorneys Eyes Only," and completely disregarding the court ordered procedures. At no point prior to filing the Clinton motion did Infowars profess ignorance of the procedures they had proposed and which were court ordered to be followed, nor have they since taken

any steps to correct their improper filing. If Infowars was of the opinion that the plaintiffs' designation was unreasonable and not made in good faith, the solution was to follow the court ordered procedure to challenge the designation, not to blatantly disregard it and make the confidential information available on the internet by filing it in the court file. The court rejects Infowars' baseless argument that there was no good cause to issue the protective orders, where both sides recited, in writing, detailed justification for a good cause basis. In short, Infowars, having advocated for a court ordered protective order, filing no less than three versions, having recited in writing the good cause bases for the issuance of the protective order, and having no objection to the plaintiffs' proposed modification, now takes the absurd position that the court ordered protective order circumvents the good cause requirements of Practice Book 13-5, did not need to be complied with, and should not be enforced by the court. This argument is frightening. Given the cavalier actions and willful misconduct of Infowars in filing protected deposition information during the actual deposition, this court has grave concerns that their actions, in the future, will have a chilling effect on the testimony of witnesses who would be rightfully concerned that their confidential information, including their psychiatric and medical histories, would be made available to the public. The court will address sanctions at a future hearing.

Judicial Notice (JDNO) was sent regarding this order.

421277

Judge: BARBARA N BELLIS

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (https://jud.ct.gov/external/super/E-Services/e-standards.pdf), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

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SUPERIOR COURT

LAFFERTY, ERICA Et Al
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JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

8/6/2021

ORDER

ORDER REGARDING:
07/27/2021 428.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER:

On November 6,2020, the defendants Alex Jones, Infowars LLC, Free Speech Systems LLC,, Infowars Health LLC and Prison Planet TV LLC (the defendants) filed a motion for protective order, objecting to the notice of videotaped deposition of Melinda Flores, the current manager of accounting at Free Speech System LLC (FSS) and objecting to each of the production requests served along with the notice of deposition. Production Request #7 asked for "(a)ny and all subsidiary ledgers for each account listed in the Trial balances produced in response to Request No. 6 above." The objection to Production Request #7 stated as follows: "This request is overbroad, irrelevant, and disproportionate to the needs of the case. This request is unrelated to any claim or defense raised in the action or the elements thereof. The trial balances of FSS will not lead to the discovery of admissible evidence and are not themselves admissible for any purpose. It is unduly burdensome as it requires digging through eight years of accounting. This request serves only to invade the privacy of the deponent and is harassing and oppressive to the deponent." The defendants did not raise any objection that the request itself, or the term subsidiary ledgers, was in any way confusing or unclear, which is a typical basis for a discovery objection. The court overruled the objection on April 29,2021. On May 6, 2021, the court ordered the deposition of Flores to take place by June 4, 2021 and ordered the documents to be produced by the close of business on May 14,2021.The court stated in writing that failure to comply with the order may result in sanctions. The subsidiary ledger information also referred to as account detail was easily accessible to Flores, by clicking on each general account. Despite the court orders,and although the information exists, is maintained by FSS, and could have been produced by Flores as was required by the court orders, the documents were not produced. The court rejects the statement of the accountant retained by FSS that FSS does not "maintain or utilize" subsidiary ledgers as not credible in light of the circumstances. There is no excuse for the defendants' disregard of not only their discovery obligations, but the two court orders. The court finds that the failure to comply with the production request has prejudiced the plaintiffs their ability to both prosecute their claims and conduct further depositions in a meaningful manner.

Judicial Notice (JDNO) was sent regarding this order.

421277

Judge: BARBARA N BELLIS

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (https://jud.ct.gov/external/super/E-Services/e-standards.pdf), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

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SUPERIOR COURT

LAFFERTY, ERICA Et Al
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JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

8/6/2021

ORDER

ORDER REGARDING:
07/27/2021 428.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER:

CONTINUED ORDER: The Flores deposition shall be resumed, with the deponent producing the subsidiary ledger/account detail information. Sanctions will be addressed at a future hearing.

Judicial Notice (JDNO) was sent regarding this order.

421277

Judge: BARBARA N BELLIS
Processed by: Ronald Ferraro

ORDER 421277

DOCKET NO: UWYCV186046436S

SUPERIOR COURT

LAFFERTY, ERICA Et Al
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JONES, ALEX EMRIC Et Al

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

9/30/2021

ORDER

ORDER REGARDING:
08/24/2021 450.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER:

In Connecticut, all parties, in responding to a request for the production of documents, must follow the long standing rules of practice. Connecticut Practice Book Section 13-10(a) requires the responding party to serve a written response, which may be in electronic format. Section 13-10(b) requires that the request for production that is being responded to must be repeated immediately before the response. Section 13-10(c)requires the responding party to produce the documents with the response, served upon all parties. Practice Book Section 13-15 mandates that when a responding party discovers additional or new information or documents, the responding party must file and serve a supplemental or corrected compliance. Finally, Practice Book Section 10-12(a) clearly states that it is the responsibility of counsel to make service "of every paper relating to discovery" on all appearing parties in the case. These rules are routinely complied with and they are not complicated. The Jones defendants, however, seem to take the position that the rules of practice do not apply to them. The court rejects their baseless argument that the practice book does not require formality with respect to the production of documents. There is no dispute here that the Jones defendants failed to follow the rules as they relate to discovery. The actions they took, as they themselves outlined in their objection and surreply, fall far short of meeting their obligations under our rules. The purported June 17, 2019 email transmission of zip files from Attorney Pattis to Attorney Sterling, Attorney Mattei, and Attorney Reiland containing Google Analytics reports that plaintiffs' counsel indicates was never received was not sent to the defendant Wolfgang Halbig (who had not consented to electronic service), the Midas defendants (who were represented by counsel), or Corey Sklanka(who was also represented by counsel), nor did the purported transmission otherwise comply with the rules of practice. As such, it is not necessary for the court to resolve the issue of whether the purported transmission was actually sent as it cannot be considered proper compliance under our rules. In short, after protracted objections and arguments by the Jones defendants over whether they had the ability to produce ANY Google Analytics data, to date they have still failed to comply. Similarly, the social media analytics that the Jones defendants previously represented as having been produced, and now claim was not produced due to inadvertence until they shared it with plaintiffs' counsel through a Zoom chat function at the June 28, 2021 deposition, similarly falls short both procedurally and substantively. (The court also notes that because the rules were again disregarded, it is unable to ascertain based on the filings whether counsel for Genesis Communications Network, Inc., participated in either the deposition or the Zoom chat function). In light of this continued failure to meet their discovery obligations in violation of the court's order, to the prejudice of the plaintiffs, the court will address the appropriate sanctions at the next status conference. Finally, with respect to future discovery compliance, all parties are required to follow the procedures the court has noted previously. Additionally, the court is requiring that all notices of compliance or supplemental compliance are to be filed with the court, along with Practice Book Section 10-14(a) proof of service made by a certificate of counsel substantially using the language set forth in subsection (a). Production documents are not to be filed with the court. Failure to comply with this order as it relates to future compliance or supplemental compliance is sanctionable.

Judicial Notice (JDNO) was sent regarding this order.

421277

Judge: BARBARA N BELLIS

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (https://jud.ct.gov/external/super/E-Services/e-standards.pdf), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.

DOCKET NO: UWYCV186046436S

SUPERIOR COURT

LAFFERTY, ERICA Et Al
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JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

10/7/2021

ORDER

The following order is entered in the above matter:

ORDER:

At the October 20, 2021 hearing, the court will address the motion to seal (#455), the defendants' motion to dismiss (#445),any appropriate sanctions that should enter against the Jones defendants based on their conduct in this matter to date, including conduct relating to discovery, and any other matters that are ready to be adjudicated. Additionally, Attorney Jay Wolman is ordered to show cause at the hearing as to whether he should be referred to disciplinary authorities or sanctioned by the court directly, see Connecticut Practice Book Section 2-45, regarding his questioning of witness Robert Jacobson at the September 17, 2021 deposition. Attorney Wolman is further ordered to lodge with the court a complete, official transcript of the Jacobson deposition by no later than October 14, 2021.

421277

Judge: BARBARA N BELLIS

2021 WL 4571198 (Tex.Dist.) (Trial Order)
District Court of Texas,
459th District.
Travis County

Neil HESLIN, Plaintiff,

v.

Alex E. JONES, Infowars, LLC, Free Speech Systems, LLC, and Owen Shroyer, Defendants.

No. D-1-GN-18-001835.
September 27, 2021.

Order on Plaintiff's Motion for Default Judgment

Hon. Maya Guerra Gamble, Judge.

***1** On this day, the Court considered Neil Heslin's Motion for Default Judgment. The Court finds that the Motion should be granted.

BACKGROUND

On October 18, 2019, this Court ordered expedited discovery in Mr. Heslin's IIED claim, including written discovery and depositions. Defendants failed to comply with the order in numerous respects. On December 20, 2019, the Court assessed sanctions and held the Defendants in contempt for intentionally disobeying the order. At that time, the Court took under advisement all additional remedies based on representations by Defendants that discovery would be promptly supplemented during the appellate stay. As the Court stated in its prior order, the amount of supplemental discovery would be a factor when revisiting sanctions upon remand. Despite their promises, Defendants failed to supplement any discovery following the 2019 hearing and prior to remand. Defendants also failed to supplement any discovery for nearly three months following remand in June 2021.

On August 26, 2021, a few days before the hearing on this matter, Defendants provided some additional documents to Mr. Heslin, but it is clear these documents do not satisfy Defendants' outstanding obligations. In addition, Defendants did not provide any supplemental discovery responses, nor did Defendants make efforts for a corporate representative deposition to cure their non-appearance. Nor have the Defendants fully and fairly responded to the discovery requests at issue.

FINDINGS

The Court now finds that a default judgment on liability should be granted. The Court finds that Defendants' discovery conduct in this case has shown flagrant bad faith and callous disregard for the responsibilities of discovery under the rules. The Court finds Defendants' conduct is greatly aggravated by the consistent pattern of discovery abuse throughout the other Sandy Hook cases pending before this Court. Prior to the discovery abuse in this case, Defendants also violated this Court's discovery orders in *Lewis v. Jones, et al.* (D-1-GN-18-006623) and *Heslin v. Jones, et al.* (D-1-GN-18-001835). After next violating the October 18, 2019 discovery order in this case, Defendants also failed to timely answer discovery in *Pozner v. Jones, et* al. (D-1-GN-18-001842), another Sandy Hook lawsuit, as well as *Fontaine v. InfoWars, LLC, et al.* (D-1-GN-18-1605), a similar lawsuit involving Defendants' publications about the Stoneman Douglas High School shooting. The Court also notes that Defendants

have repeatedly violated discovery orders in *Lafferty v. Jones,* a similar defamation lawsuit brought by a different set of Sandy Hook parents in the Superior Court of Connecticut In sum, Defendants have been engaged in pervasive and persistent obstruction of the discovery process in general. The Court is also faced with Defendants' refusal to produce critical evidence. Defendants have shown a deliberate, contumacious, and unwarranted disregard for this Court's authority. Based on the record before it, this Court finds that Defendants' egregious discovery abuse justifies a presumption that its defenses lack merit

***2** In reaching its decision, this Court has considered lesser remedies before imposing sanctions that preclude Defendants' ability to present the merits of their liability defense and determined they would be inadequate in light of the history of the Defendants conduct in this court. However, the Court has more than a sufficient record to conclude that an escalating series of judicial admonishments, monetary penalties, and non-dispositive sanctions have all been ineffective at deterring the abuse. This Court rejects lesser sanctions because they have proven ineffective when previously ordered. They would also benefit Defendants and increase the costs to Plaintiffs, and they would not adequately serve to correct the Defendants' persistent discovery abuses. Furthermore, in considering whether lesser remedies would be effective, this Court has also considered Defendants' general bad faith approach to litigation, Mr. jones' public threats, and Mr. Jones' professed belief that these proceedings are “show trials.”

It is clear to the Court that discovery misconduct is properly attributable to the client and not the attorney, especially since Defendants have been represented by seven attorneys over the course of the suit. Regardless of the attorney, Defendants' discovery abuse remained consistent.

It is accordingly ORDERED that a default judgment be entered against Defendants with respect to liability in this lawsuit.

It is further ORDERED that Defendants shall pay reasonable attorney's fees in connection with Plaintiffs' Motion. Plaintiffs shall submit evidence regarding the reasonable value of the time expended by their attorneys related to their Motion for Default Judgment subsequent to the December 2019 hearing in this matter.

Dated September 27, 2021.

<<signature>>

Hon. Maya Guerra Gamble

End of Document

2021 WL 4571199 (Tex.Dist.) (Trial Order)
District Court of Texas,
459th District.
Travis County

Scarlett LEWIS, Plaintiff,

v.

Alex E. JONES, Infowars, LLC, and Free Speech Systems, LLC, Defendants.

No. D-1-GN-18-006623.
September 27, 2021.

Order on Plaintiff's Motion for Contempt

Hon. Maya Guerra Gamble, Judge.

***1** On this day, the Court considered Plaintiff's Motion for Contempt The Court finds that the motion should he granted.

BACKGROUND

On January 25, 2019, this Court ordered Defendants to respond to court-approved discovery requests by February 25, 2019 and appear for depositions by March 25, 2019. Defendants refused to provide any documents, citing the reporter's privilege. In an order on March 8, 2019, this Court ordered Defendants to immediately produce all responsive documents. Thereafter, Defendants failed to produce any documents or prepare their corporate representative for deposition. After Defendants failed to comply with the discovery order, Plaintiff brought a motion for sanctions. A few days prior to the sanctions hearing on April 3, 2019, Defendants provided a set of documents. However, Defendants' counsel admitted at the hearing that the documents were incomplete and not sufficient. Defendants' counsel agreed to pay $8,100 in attorney's fees and abandoned Defendants' TCPA arguments except for a sole legal issue to avoid being sanctioned at that time.

Defendants then unsuccessfully appealed the Court's denial on the TCPA motion. Following remand on June 4, 2021, Defendants took no action to comply with the January 25 discovery order, or any of the Court's other discovery orders, for over a month. Plaintiff then filed her Motion for Contempt under Rule 215 on July 6, 2021. Even after that motion was filed, Defendants continued to withhold discovery through July and August.

On August 26, 2021, a few days before the hearing on this matter, Defendants provided some additional documents to Ms. Lewis, but it is clear these documents do not satisfy Defendants' outstanding obligations. In addition, Defendants did not provide any supplemental discovery responses, nor did Defendants make efforts for a corporate representative deposition to cure their non-appearance. Nor have the Defendants fully and fairly responded to the discovery requests at issue.

FINDINGS

This Court finds that Defendants have intentionally disobeyed the Court's order. The Court also finds that Defendants' failure to comply with the discovery order in this case is greatly aggravated by Defendants' consistent pattern of discovery abuse throughout the other similar cases pending before this Court. Defendants violated this Court's discovery orders in *Heslin v. Jones, et al.* (D-1-GN-18-001835) and *Heslin v. Jones, et al.*[1] (D-1-GN-18-004651), both of which are related cases involving

Defendants' publications about the Sandy Hook Elementary School shooting. Defendants also failed to timely answer discovery in *Pozner v. Jones, et al.* (D-1-GN-18-001842), another Sandy Hook lawsuit, as well as *Fontaine v. InfoWars, LLC, et al.* (D-1-GN-18-1605), a similar lawsuit involving Defendants' publications about the Stoneman Douglas High School shooting. The Court also notes that Defendants have repeatedly violated discovery orders in *Lafferty v. Jones,* a similar lawsuit brought by a different set of Sandy Hook parents in the Superior Court of Connecticut. The Court finds that Defendants' discovery conduct in this case is the result of flagrant bad faith and callous disregard for the responsibilities of discovery under the rules.

***2** It is clear to the Court that discovery misconduct is properly attributable to the client and not the attorney, especially since Defendants have been represented by seven attorneys over the course of the suit. Regardless of the attorney, Defendants' discovery abuse remained consistent.

It is accordingly ORDERED that sanctions be assessed Defendants, including the following remedies allowed under Rule 215:

( ) an order disallowing any further discovery of any kind by the Defendants.

( ) an order charging all of the expenses of discovery or taxable court costs against the Defendants;

( ) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; to wit: _____.

( ) an order refusing to allow the Defendants to support or oppose designated claims or defenses, or prohibiting them from introducing designated matters in evidence; to wit:_____.

(X) a judgment by default against the Defendants, as this Court has considered lesser sanctions and determined they would be inadequate to cure the violation in light of the history of Defendants' conduct in this Court. In reaching its decision, this Court has considered lesser remedies before imposing sanctions that preclude Defendants' ability to present the merits of their liability defense. However, the Court has more than a sufficient record to conclude that an escalating series of judicial admonishments, monetary penalties, and non-dispositive sanctions have all been ineffective at deterring the abuse. This Court rejects lesser sanctions because they have proven ineffective when previously ordered. They would also benefit Defendants and increase the costs to Plaintiffs, and they would not adequately serve to correct the Defendants' persistent discovery abuses. Furthermore, in considering whether lesser remedies would be effective, this Court has also considered Defendants' general bad faith approach to litigation, Mr. Jones' public threats, and Mr. Jones' professed belief that these proceedings are “show trials.”

It is further ORDERED that Defendants shall pay reasonable attorney's fees in connection with Plaintiff's Motion. Plaintiff shall submit evidence regarding the reasonable value of the time expended by her attorneys related to her Motion.

Dated September 27, 2021.

<<signature>>

Hon. Maya Guerra Gamble

Footnotes

1 Subsequently consolidated with D-1-GN-18-0O1835.

End of Document

2021 WL 4620658 (Tex.Dist.) (Trial Order)
District Court of Texas,
459th District Court.
Travis County

Leonard POZNER and Veronique De La Rosa, Plaintiffs,

v.

Alex E. JONES, InfoWars, LLC, and Free Speech Systems, LLC, Defendants.

No. D-1-GN-18-001842.
September 27, 2021.

Order on Plaintiffs' Motion to Compel and Motion for Sanctions

Hon. Maya Guerra Gamble, Judge.

***1** On this day, the Court considered Plaintiffs' Motion to Compel and Motion for Sanctions. The Court finds that the motions should be granted.

BACKGROUND

On May 29, 2018, Plaintiffs served written discovery on Defendant Free Speech Systems, LLC. Twenty-eight days after service of the requests, Defendants filed a TCPA Motion, which was subsequently denied and appealed Following remand, Defendants failed to provide responses.

One month after remand, on July 2, 2021, Plaintiffs wrote to the Defendants inquiring about the overdue responses. Plaintiffs offered an additional 14 days for Defendants to provide responses, in which case Plaintiffs agreed to waive any complaint about their timeliness. That same day, Defendants' counsel requested that Plaintiffs' counsel provide a copy of the *Pozner* discovery requests. More than three weeks later, on July 27, 2021, with no responses provided, Plaintiffs brought the instant motion. Defendants have never answered the discovery requests.

FINDINGS

The Court find that Defendants unreasonably and vexatiously failed to comply with their discovery duties. The Court finds that Defendants' failure to comply with discovery in this case is greatly aggravated by Defendants' consistent pattern of discovery abuse throughout the other similar cases pending before this Court. Prior to this latest discovery failure, Defendants repeatedly violated this Court's discovery orders in *Lewis v. Jones, et al.* (D-1-GN-18-006623), *Heslin v. Jones, et al.* (D-1-GN-18-001835), and *Heslin v. Jones, et al.*[1] (D-1-GN-18-004651),all of which are related cases involving Defendants' publications about the Sandy Hook Elementary School shooting. Defendants also failed to timely answer discovery in *Fontaine v. InfoWars, LLC, et al.* (D-1-GN-18-1605), a similar defamation lawsuit involving Defendants' publications about the Stoneman Douglas High School shooting. The Court also notes that Defendants have repeatedly violated discovery orders in *Lafferty v. Jones*, a similar defamation lawsuit brought by a different set of Sandy Hook parents in the Superior Court of Connecticut. The Court finds that Defendants' discovery conduct in this case is the result of flagrant bad faith and callous disregard for the responsibilities of discovery under the rules.

It is clear to the Court that discovery misconduct is properly attributable to the client and not the attorney, especially since Defendants have been represented by seven attorneys over the course of the suit. Regardless of the attorney, Defendants' discovery abuse remained consistent.

For these reasons, it is accordingly ORDERED that sanctions be assessed Defendants, including the following remedies allowed under Rule 215:

( ) an order disallowing any further discovery of any kind by the Defendants.

( ) an order charging all of the expenses of discovery or taxable court costs against the Defendants;

( ) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; to wit,

***2** _____

( ) an order refusing to allow the Defendants to support or oppose designated claims or defenses, or prohibiting them from introducing designated matters in evidence.

(X) a judgment by default against the Defendants, as this Court has considered less sanctions and determined they would be inadequate to cure the violation in light of the history of Defendants' conduct in this Court. In reaching its decision, this Court has considered lesser remedies before imposing sanctions that preclude Defendants' ability to present the merits of their liability defense. However, the Court has more than a sufficient record to conclude that an escalating series of judicial admonishments, monetary penalties, and non-dispositive sanctions have all been ineffective at deterring the abuse. This Court rejects lesser sanctions because they have proven ineffective when previously ordered. They would also benefit Defendants and increase the costs to Plaintiffs, and they would not adequately serve to correct the Defendants' persistent discovery abuses. Furthermore, in considering whether lesser remedies would be effective, this Court has also considered Defendants' general bad faith approach to litigation, Mr. Jones' public threats, and Mr. Jones' professed belief that these proceedings are “show trials.”

It is further ORDERED that Defendants shall pay reasonable attorney's fees in connection with Plaintiffs' Motion. Plaintiffs shall submit evidence regarding the reasonable value of the time expended by their attorneys related to their Motion.

Dated September 27, 2021.

<<signature>>

Hon. Maya Guerra Gamble

Footnotes

1 Subsequently consolidated with D 1-GN-18-001835.

End of Document

XO6 UWY CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET AL	:	JUDICIAL DISTRICT OF WATERBURY
V	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET AL	:	NOVEMBER 15, 2021

XO6 UWY CV18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL	:	JUDICIAL DISTRICT OF WATERBURY
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COURT'S RULING

B E F O R E:

THE HONORABLE BARBARA N. BELLIS, JUDGE

A P P E A R A N C E S:

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Recorded and Transcribed By:
Patricia Sabol
Court Monitor
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THE COURT: All right. So I will order a copy of the transcript of the following ruling, and I will sign it and I will place it in the court file as my decision for the purposes of any appeal.

So I'll first address the Clinton deposition issue and the conduct of July 1, 2021. In the July 19, 2021 court filing by the defendants Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet, LLC, they described how in the motion to depose Hillary Clinton, testimony designated by the plaintiffs as highly confidential was filed in the Clinton deposition motion. They explained that this was done because in their opinion, the plaintiffs did not have a good-faith basis to designate the deposition as highly confidential before the deposition had commenced, despite the fact that the Jones defendants had previously done so themselves. And it is not lost on the Court that the highly confidential information was improperly filed in the middle of the first deposition of a plaintiff.

The July 19, 2021 filing is in sharp contrast to the Jones defendants' position at the October 20, 2021 sanctions hearing where the Court addressed what, if any, sanctions should enter. At the October 20 hearing, the Jones defendants claim they could publish confidential information as long as they did not reveal the name of the witness. That is, they argued

unconvincingly that they didn't understand the very protective order that they themselves drafted and asked the Court to approve as a Court order, which the Court did.

The position of the Jones defendants at the October 20, 2021 sanctions hearing did nothing but reinforce the Court's August 5th, 2021 order and findings that the cavalier actions on July 1st, 2021 constituted willful misconduct and violated the Court's clear and unambiguous protective order.

The history of the attorneys who have appeared for the defendants, Alex Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC is a convoluted one, even putting aside the motions to withdraw appearance, the claims of conflict of interest and the motions for stay advanced by these five defendants.

As the record reflects, on June 28, 2018, Attorney Wolman appeared for all five of the Jones defendants. Eight months later, on March 1st, 2019, Attorney Wolman is out of the case and Pattis & Smith filed an in-lieu-of appearance for all five defendants. On February 24, 2020, Attorney Latonica also appeared for all five defendants. Five months later on July 7, 2020, Attorney Latonica and Pattis & Smith is now out of the case and Attorney Wolman is back in the case for all five defendants. Then on

June 28, 2020, Pattis and Smith is back in the case, but now only appears for the four LLC defendants.

But what is perhaps more significant is the transparent attempt to cloud the issues by Pattis & Smith, for example, by listing the names of only three of the four clients they represent when filing the motion to take the deposition of Hillary Clinton and then listing all four clients in the July 19, 2021 filing relating to the issue. And by Attorney Wolman who then argued in his October 20, 2021 file that Infowars, LLC had no involvement in the motion for commission because their lawyer did not list their name on the motion. It is simply improper under our rules of practice for an attorney to do so.

Turning to the issue of the subsidiary ledgers. The five Jones defendants on November 6, 2020 filed with the Court their discovery objections relating to the deposition of Free Speech Systems' accounting manager and current employee, Melinda Flores. In response to the plaintiff's request for subsidiary ledgers, the Jones defendants objected on the basis that the production of the subsidiary ledgers was oppressive, unduly burdensome, disproportionate, harassing and that it will require digging through eight years of accounting. No objection was raised as to the term "subsidiary ledger", although parties frequently will object to a discovery request if they

consider it vague or confusing.

On April 29, 2021, the Court overruled the objection. On May 6, 2021, the Court ordered the deposition of Flores to take place on June 4, 2021 and ordered the documents to be produced by the close of business on May 14, 2021 stating that failure to comply may result in sanctions.

On May 14, 2021, the five Jones defendants responded to the document request and Court order and stating that the subsidiary ledgers were incorporated into the trial balances and had been produced.

At her June 4, 2021 deposition, Flores, the accounting manager, testified that subsidiary ledgers or detail was easily accessible and available to her. She testified that it would show the sources of advertising income and she testified repeatedly that Free Speech Systems maintained subsidiary ledger information. Flores did not believe she was obligated to produce the subsidiary ledgers, and it is unclear as to whether they have been produced.

It was impossible to reconcile the expert hired by Free Speech Systems with the November 6, 2020 objections filed with the Court and with Flores' deposition testimony. While the Jones defendants in their May 5th, 2021 motion state that Flores would be the best employee to identify and produce the requested documents and further state that Flores

would be compelled by Free Speech Systems to produce the requested documents at the deposition, the defendants hired expert, Mr. Roe, said that Flores was wrong and that Free Speech Systems doesn't use or have subsidiary ledgers.

The Court, in its August 6, 2021 order, found that the subsidiary ledger information was easily accessible by Flores by clicking on each general account, that, despite the Court orders and although the information exists and is maintained by Free Speech Systems and was required by the Court order to be produced, it had not been produced. And, again, it is still unclear as to what documents have been produced.

The Court rejected Roe's statements in his affidavit as not credible in light of the circumstances. The Court found that the plaintiffs were prejudiced in their ability to prosecute their claims and conduct further meaningful depositions and that sanctions would be addressed at a future hearing.

At the October, 2021 sanctions hearing, the Court addressed whether sanctions should enter. The Court finds that sanctions are, in fact, appropriate in light of the defendant's failure to fully and fairly comply with the plaintiff's discovery request and the Court's orders of April 29, 2021, May 6, 2021 and August 6, 2021.

Turning to the trial balances. In addition to objecting to the deposition of Flores, the Jones defendants, as I mentioned, filed discovery objections to the request for production directed to Flores. The Court ruled in favor of the defendants on one production request and ruled in favor of the plaintiffs with respect to others.

In addition to the subsidiary ledgers, the Court ordered production of the trial balances. Flores had run trial balances in the past unrelated to this action. Flores testified at her June 4, 2021 deposition that she personally accessed Quick Books and selected the option to generate trial balances for 2012 to 2019. She testified that she ran the reports and printed them out and believed that the reports were produced. Her testimony the reports that she ran were produced was left uncorrected by counsel at the deposition.

The reports were not produced by the Court-ordered deadline of May 14, 2021. They were not produced at her June 4, 2021 deposition, and they have not been produced to date, despite their obligation to do so.

While the Jones defendants, in their May 5, 2021 Court filing, emphasized that Flores would be the best employee to identify and produce the requested documents which would include the trial balances and

that Flores would be compelled by Free Speech Systems to produce the documents at her deposition, not only were the reports not produced, but the Jones defendants in their October 7, 2021 filing now claim that Flores, a mere bookkeeper, provided flawed information to the defendants that the defendants, through Roe, had to correct. And the Court rejects that position.

The Jones defendants argue that Roe combined some accounts that were not used consistently and consolidated some general accounts because various transactions all involved the same account and those records created by the Jones defendants' outside accountant were the records that were produced. But these records that removed accounts and consolidated accounts altered the information in the reports that their own accounting manager had produced, and they contain trial balances that did not balance. These sanitized, inaccurate records created by Roe were simply not responsive to the plaintiff's request or to the Court's order.

Turning to the analytics. The date for the parties to exchange written discovery has passed after numerous extensions by the Court. On May 14, 2021, the Court ordered that the defendants were obligated to fully and fairly comply with the plaintiff's earlier request for disclosure and production.

On June 1, 2021, the defendants filed an emergency motion for protective order apparently seeking protection from the Court's own order where the defendants again attempted to argue the scope of appropriate discovery.

The Court, on June 2, 2021, declined to do so and extended the deadline for final compliance to June 28, 2021 ordering the defendants to begin to comply immediately on a rolling basis. In its June 2nd order, the Court warned that failure to comply would result in sanctions including default.

With respect to analytics, including Google Analytics and social media Analytics, the defendants on May 7, 2019 represented that they had provided all the analytics that they had. They stated with respect to Google Analytics that they had access to Google Analytics reports, but did not regularly use them. As the Court previously set forth in its September 30, 2021 order, the defendants also claim that on June 17, 2019, they informally emailed zip files containing Google Analytics reports to the plaintiffs, but not the codefendants, an email the plaintiffs state they did not receive and that the Court found would not have been in compliance with our rules of practice.

On June 28, 2021, the Jones defendants filed a notice of compliance stating that complete final supplemental compliance was made by the defendants,

Alex Jones and Free Speech Systems, LLC and that Infowars, LLC, Infowars Health, LLC and Prison Planet, LLC, quote: Had previously produced all documents required to be produced, end quote, representing that with respect to the Google Analytics documents, Free Speech Systems, LLC could not export the dataset and that the only way they could comply was through the sandbox approach.

Then on August 8, 2021, the Jones defendants for the first time formally produced Excel spreadsheets limited to Google Analytics apparently for Infowars dot com and not for any of the other websites such as Prison Planet TV or Infowars Health. Importantly, the Jones defendants to date have still not produced any analytics data from any other platform such as Alexa, Comcast or Criteo.

The Jones defendants production of the social media analytics has similarly been insubstantial and similarly has fallen far short both procedurally and substantively, despite prior representations by the Jones defendants that they had produced the social media analytics and despite the May 25, 2021 deposition testimony of Louis Certucci, Free Speech Systems social media manager for nearly a decade, that there were no such documents.

At the June 28, 2021 deposition of Free Speech Systems corporate designee Zimmerman, Mr. Zimmerman

testified that, in fact, he had obtained some responsive documents from Certucci which were then loaded into a deposition chat room by counsel for the Jones defendants. It appears that these documents were minimal summaries or reports for Facebook and Twitter, but not for other platforms used by the defendants such as You Tube.

Any claim of the defendants that the failure to produce these documents was inadvertent falls flat as there was no evidence submitted to the Court that the defendants had a reasonable procedure in place to compile responsive materials within their power, possession or knowledge.

Months later, on October 8, 2021, the Jones defendants formally produced six documents for the spring of 2017 for Facebook containing similar information to the Zimmerman chat room documents, but not included in the chat room documents and screen shots of posts by Free Speech Systems to an unidentified social media account with no analytics.

The defendants represented that they had produced all the analytics when they had not done so. They represented in court filings that they did not rely on social media analytics and this, too, is false.

I'm going to need to take a thirty second water break, please.

(A short break in the proceedings occurred.)

This response was false. The plaintiffs in support of their motion for sanctions on the analytics issue attached as exhibit D, an email dated December 15, 2014 between former Free Speech Systems business manager Timothy Fruge and current Free Speech Systems employee Buckley Hamman. Fruge attaches annotated charts of detailed analytics concerning Jones' 2014 social media audience including gender demographics engagement and social media sites that refer people to Infowars dot com. As pointed out by the plaintiffs, Fruge's annotations are even more telling than the charts themselves and totally contradict the Jones defendants misrepresentations to the Court that, quote: There is no evidence to suggest that Mr. Jones or Free Speech Systems ever used these analytics to drive content, end quote.

The next image on the document shows key indicators on Twitter. Those are engagement and influence. Again, this is reading from Fruge's notes. Again, the next image shows the key indicators on Twitter. Those are engagement and influence. Notice our influence is great and our engagement is low. I bring this up -- again these are Fruge's notes -- because we should try and raise our engagement with our audience. Engagement is how well we are communicating and interacting with our audience. The higher our engagement, the more valuable our audience

will become to our business. And that is the end of Fruge's notes.

I would note that regardless of this reliance on social media analytics, the concept is simple. The defendants were ordered to produce the documents and our law requires them to produce information within their knowledge, possession or power. Discovery is not supposed to be a guessing game. What the Jones defendants have produced by way of analytics is not even remotely full and fair compliance required under our rules.

The Court finds that the Jones defendants have withheld analytics and information that is critical to the plaintiff's ability to conduct meaningful discovery and to prosecute their claims. This callous disregard of their obligations to fully and fairly comply with discovery and Court orders on its own merits a default against the Jones defendants.

Neither the Court nor the parties can expect perfection when it comes to the discovery process. What is required, however, and what all parties are entitled to is fundamental fairness that the other side produces that information which is within their knowledge, possession and power and that the other side meet its continuing duty to disclose additional or new material and amend prior compliance when it is incorrect.

Here the Jones defendants were not just careless. Their failure to produce critical documents, their disregard for the discovery process and procedure and for Court orders is a pattern of obstructive conduct that interferes with the ability of the plaintiffs to conduct meaningful discovery and prevents the plaintiffs from properly prosecuting their claims.

The Court held off on scheduling this sanctions hearing in the hopes that many of these problems would be corrected and that the Jones defendants would ultimately comply with their discovery obligations and numerous Court orders, and they have not.

In addressing the sanctions that should enter here, the Court is not punishing the defendants. The Court also recognizes that a sanction of default is one of last resort. This Court previously sanctioned the defendants not by entering a default, but by a lesser sanction, the preclusion of the defendant's special motions to dismiss. At this point entering other lesser sanctions such as monetary sanctions, the preclusion of evidence or the establishment of facts is inadequate given the scope and extent of the discovery material that the defendants have failed to produce.

As pointed out by the plaintiffs, they are attempting to conduct discovery on what the defendants publish and the defendants' revenue. And the failure

of the defendants to produce the analytics impacts the ability of the plaintiffs to address what is published and the defendants failure to produce the financial records such as sub-ledgers and trial balances affects the ability of the plaintiffs to address the defendants' revenue. The prejudice suffered by the plaintiffs, who had the right to conduct appropriate, meaningful discovery so they could prosecute their claims again, was caused by the Jones defendants willful noncompliance, that is, the Jones defendants failure to produce critical material information that the plaintiff needed to prove their claims.

For these reasons, the Court is entering a default against the defendants Alex Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC. The case will proceed as a hearing in damages as to the defendants. The Court notes Mr. Jones is sole controlling authority of all the defendants, and that the defendants filed motions and signed off on their discovery issues jointly. And all the defendants have failed to fully and fairly comply with their discovery obligations.

As I said, I will order a copy of the transcript. I will sign it and I will file it in the Court as the Court's order.

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Bellis, J.

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C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in the Superior Court, Judicial District of Waterbury, at Waterbury, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 15th day of November, 2021.

Dated this 15th day of November, 2021, in Waterbury, Connecticut.

Patricia Sabol

Court Monitor

NO. X06-UWY-CV-18-6046436S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**APRIL 29, 2019**

NO. X06-UWY-CV18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**APRIL 29, 2019**

NO. X06-UWY-CV-18-6046438S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**APRIL 29, 2019**

PLAINTIFFS' MOTION FOR RELIEF
CONCERNING THE ALEX JONES FALSE AFFIDAVIT

On April 22, the Court sought the plaintiffs' position concerning sanctions against the Jones Defendants in connection with the false affidavit of Alex Jones. The plaintiffs hereby state their position and seek relief from the Court, in relation to the creation and submission of the false affidavit.

This motion relies on the Court's finding that the Jones Defendants filed a false affidavit, and on the fact that the Jones Defendants used that affidavit as a basis to explain their noncompliance, avoid an imminent preclusion sanction, and obtain additional time to comply

Speech Systems, LLC, InfoWars LLC, InfoWars Health LLC and PrisonPlanet TV LLC .... I am the sole officer and member of all [these entities] ....")

II. Plaintiffs Are Prejudiced by the Jones Defendants' Use of the False Affidavit and Are Entitled to Relief Accordingly

A. Legal Standards Concerning Willful Abuse of Process

In June 2014, the Judges of the Superior Court adopted Practice Book § 1-25, "Actions Subject to Sanctions," which provides:

> (a) No party or attorney shall bring or defend an action, or assert or oppose a claim or contention, unless there is a basis in law and fact for doing so that is not frivolous. Good faith arguments for an extension, modification or reversal of existing law shall not be deemed frivolous.
>
> (b) Except as otherwise provided in these rules, the judicial authority, solely on its own motion and after a hearing, may impose sanctions for actions that include, but are not limited to, the following:
>
> (1) Filing of pleadings, motions, objections, requests or other documents that violate subsection (a) above;
> (2) Willful or repeated failure to comply with rules or orders of the court, including Section 4-7 on personal identifying information;
> (3) After prior direction from the court, the filing of any materials or documents that: (A) are not relevant and material to the matter before the court or (B) contain personal, medical or financial information that is not relevant or material to the matter before the court.
>
> (c) The judicial authority may impose sanctions including, but not limited to, fines pursuant to General Statutes § 51-84; orders requiring the offending party to pay costs and expenses, including attorney's fees; and orders restricting the filing of papers with the court.
>
> (d) Offenders subject to such sanctions may include counsel, self-represented parties, and parties represented by counsel.

Prac. Bk. § 1-25. This Section should be read in harmony with Connecticut's long-standing rules concerning discovery abuse and a court's "inherent power to impose sanctions in order to compel observance of its rules and orders…." *See Millbrook Owners Ass'n., Inc. v. Hamilton Standard,* 257 Conn. 1, 14 (2001).